FILE COPY

Office Supreme Court, U.S.
FILED
JUN 27 1958
JOHN T. FEY, Clerk

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1958

No. [redacted] 109

REDDING PINE MILLS, INC., a corporation, and ROBERT B. TOOGOOD,
Petitioners,
vs.
STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, DIXWELL L. PIERCE, Secretary of the State Board of Equalization of the State of California, and RAYMOND R. SCHULZE,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of the State of California, Third Appellate District

BRIEF FOR RESPONDENTS IN OPPOSITION

EDMUND G. BROWN, Attorney General of the State of California
JAMES E. SABINE,
Assistant Attorney General
IRVING H. PERLUSS,
Assistant Attorney General
Library and Courts Building
Sacramento 14, California
Counsel for Respondents

Printed by CALIFORNIA STATE PRINTING OFFICE

INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT	2
ARGUMENT	6
I. The Courts of California Have Held That the Subpoena Was Within the Constitutional and Statutory Authority of the State Board of Equalization and No Substantial Federal Question Is Presented	6
II. The Authority of an Administrative Agency to "Investigate" Is Not Constitutionally Limited by the Agency's Authority to "Regulate"	9
III. Petitioners Were Fairly Informed of the Scope of the Inquiry and Their Rights Were Fully Protected	12
CONCLUSION	14
APPENDIX A—Constitutional and Statutory Provisions Involved	15

CITATIONS

CASES

	Page
Crafts v. Federal Trade Commission (C. A. 9th, 1957) 244 F. 2d 882, reversed (Oct. 8, 1957) 2 L. Ed. 2d (Adv.) 23	12
Ellis v. Interstate Commerce Commission (1915) 237 U. S. 434	10
Endicott Johnson Corp. v. Perkins (1943) 317 U. S. 501	11
Fleming v. Montgomery Ward & Co. (7th C. C. A. 1940) 114 F. 2d 384, 392, cert. den. (1940) 311 U. S. 690	11
Jones v. Securities and Exchange Commission (1936) 298 U. S. 1	10
Natural Gas Pipeline Co. v. Slattery (1937) 302 U. S. 300	11
Oklahoma Press Pub. Co. v. Walling (1946) 327 U. S. 186	12
United States v. Darby (1941) 312 U. S. 100	11
Watkins v. United States (1957) 354 U. S. 178	12

STATUTES

Constitution of California	
Section 1, Article XIII	10
Section 9, Article XIII	2, 3, 6, 7
Government Code of California, Section 15613	8, 9, 17
Revenue and Taxation Code of California, Section 1831 (as added by Statutes 1949, Chapter 1466)	7, 13, 16
Statutes of California, 1949, Chapter 1466	7
Statutes of California, 1955, Chapter 256	7, 16

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 1075

REDDING PINE MILLS, INC., a corporation, and ROBERT B. TOOGOOD,
Petitioners,

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, DIXWELL L. PIERCE, Secretary of the State Board of Equalization of the State of California, and RAYMOND R. SCHULZE,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of the State of California, Third Appellate District

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the District Court of Appeal (Appendix A of Petition) is reported at 157 Advance California Appellate Reports 38, 320 P. 2d 25. A petition for hearing by the Supreme Court of California filed by petitioners was denied on March 19, 1958.

JURISDICTION

The technical jurisdictional requirements appear to be set forth adequately in the petition. It is to be observed, however, that petitioners' contentions were rejected by the courts of the State of California based upon and in conformity with the pertinent decisions of this Court.

QUESTIONS PRESENTED

1. Is the authority of an administrative agency to "investigate" constitutionally limited by the agency's authority to "regulate"?

2. Does an inquiry by the agency deny due process of law when the inquiry was authorized, relevant and necessary and petitioners were fully and fairly informed of the scope and nature of the inquiry?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 9 of Article XIII of the California Constitution, Chapter 256, California Statutes of 1955, Section 1831 of the California Revenue and Taxation Code and Section 15613 of the California Government Code are printed in Appendix A, *infra*.

STATEMENT

Petitioner Redding Pine Mills Inc. (sometimes hereinafter referred to as "Redding"), is an Oregon corporation qualified to do business in California, and petitioner Robert B. Toogood is its secretary (Trial Court Finding I, Cl. Tr., p. 34, ll. 3-7). On or about

March 20, 1957, petitioner Toogood, as secretary of Redding, was served with a subpoena duces tecum issued by the State Board of Equalization of the State of California (sometimes hereinafter referred to as the "Board"). (Trial Court Finding II, Cl. Tr., p. 34, ll. 9-14.)

Redding is a so-called "common property" taxpayer whose properties in Shasta County are subject to assessment by the assessor of that county and not by the board (Trial Court Finding III, Cl. Tr., p. 34, l. 16-p. 35, l. 8). The board refused to withdraw and quash the subpoena on demand of Redding and Toogood (Trial Court Finding IV, Cl. Tr., p. 35, ll. 10-13).

The board presently is making an appraisal survey in 16 counties of the State, including Shasta County, and a statistical survey in the remaining counties of the State to determine the relationship between the total value of land, improvements and tangible personal property entered upon the local assessment roll by the county assessor and the total market value thereof to enable the board to perform the duties required of it by Section 9 of Article XIII of the California Constitution (Trial Court Finding V, Cl. Tr., p. 35, ll. 15-24). In its appraisal surveys, and as a basis for its determination, the board is required to consider sales and other appraisal data compiled by appraisers employed by it competent to ascertain accurately the market value of the property. Such data relate to representative samples of property subject to local assessment in each county sufficient

in number and dispersion to assure an adequate sampling of the taxable wealth within the county, both as to the classes of property enumerated and as to the location thereof (Trial Court Finding V, Cl. Tr., p. 35, l. 25-p. 36, l. 8).

The board is not investigating the accuracy of assessments made by county assessors but is performing an investigative and fact-gathering function for the purpose of intercounty equalization as required by the Constitution and statutes of the State of California (Trial Court Finding VI, Cl. Tr., p. 36, ll. 12-19). The properties of Redding and other persons were selected for appraisal through a system of random stratified sampling. To determine in each county the relationship between the total value of land, improvements and tangible personal property entered upon the local assessment roll by the county assessor and the total market value thereof, it is necessary that adequate and competent appraisals be made of the selected properties. Inspection of the books and records of the owners is necessary for the appraisal by the Board of certain types of property, and the property of Redding is of this type. Inspection of the books and records of Redding was requested by the Board for this purpose, and because the books and records requested were withheld by Redding, a subpoena duces tecum was issued requiring the production of the books and records in order that the appraisal might be made (Trial Court Finding VI, Cl. Tr., p. 36, l. 19-p. 37, l. 13).

The function of intercounty equalization, which is the constitutional and statutory duty of the board, is an integral part of the property tax process in the State of California, which begins with the assessment made by county assessors on property owned by "common property" taxpayers. Thereafter the county board of supervisors sitting as a county board of equalization is required to equalize the assessments within the county. Finally, the State Board of Equalization is required to equalize the local assessment rolls of the various counties of the State (Trial Court Finding VIII, Cl. Tr., p. 38, ll. 14-24).

The trial court concluded (on a petition for writ of mandate to quash the subpoena duces tecum) that the State Board of Equalization had authority to issue and properly issued its subpoena duces tecum to the petitioners requiring them to produce the books and records of Redding for inspection and examination in furtherance of the intercounty equalization function of the State Board of Equalization. It ruled, accordingly, that the petition for writ of mandate should be dismissed and the peremptory writ sought should be denied.

The District Court of Appeal affirmed the judgment of the trial court (Appendix A of Petition) and the Supreme Court of California denied a hearing.

ARGUMENT

I. The Courts of California Have Held That the Subpoena Was Within the Constitutional and Statutory Authority of the State Board of Equalization and No Substantial Federal Question Is Presented

The State Board of Equalization is established by Section 9 of Article XIII of the California Constitution, which provides in part:

> "A State Board of Equalization * * * shall be elected * * * whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation.
>
> "* * * The boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; * * *."

It is thus apparent that the people of the State of California have imposed the duty of intercounty equalization on the State Board of Equalization. This

duty obviously cannot be performed unless and until the board has information upon which it can act.

Moreover, in 1949, the California Legislature enacted Chapter 1466, Statutes of 1949, which set forth detailed procedures for the State Board of Equalization to follow in performing the intercounty equalization function. Although the operation of Chapter 1466 was postponed in part, an important portion of the legislation presently is operative.

Thus, Chapter 256, Statutes of 1955, is a specific legislative directive to the board, providing in part:

> "The provisions of Sections 1 to 27, inclusive, of this act [Chapter 1466, Statutes of 1949] shall take effect on September 2, 1950, to the end that they shall be operative for the first time with respect to assessments made as of the first Monday in March, 1957, and taxes levied and funds allocated on the basis thereof. *Meanwhile, when funds are available for that purpose, the State Board of Equalization shall proceed with surveys in the manner directed by Section 1831 of the Revenue and Taxation Code, as added by this act, to assure completion of a survey pursuant to that section with respect to each county by the second Monday in July, 1957.*" (Emphasis added.)

It is necessary, accordingly, to refer to Section 1831 of the Revenue and Taxation Code, as added by Chapter 1466, Statutes of 1949, which section presently is effective and operative. Section 1831 provides:

> "To enable the board to perform its duties under this article and Sections 9 and 14 of Article XIII

of the State Constitution, the board shall make a survey annually in each county to determine the relationship between the total value of land, improvements and tangible personal property entered upon the roll by the assessor, and the total market value thereof. As a basis for this determination, the board shall consider sales and other appraisal data compiled by appraisers competent to determine accurately the market value of the property. These data shall relate to representative samples of property subject to local assessment in each county sufficient in number and dispersion to assure an adequate cross-section of the taxable wealth within the county, both as to the classes of property enumerated and as to the location thereof."

The intercounty equalization program thus enjoined on the State Board of Equalization by the California Constitution and the statutes is all that the board is seeking to follow here, and no more. Clearly, the board cannot operate in a vacuum—it must have information to perform its duties.

Properties in each county are selected by the board for appraisal through a system of random stratified sampling, and that is how petitioners' properties were selected. When petitioners declined to allow the board's appraisers to examine their books and records for the limited purposes outlined herein, there was no alternative left to the board other than for it to issue a subpoena. This the board has done under the general power granted it by the Legislature in Section 15613

of the California Government Code, which provides as follows:

> "The board may issue subpenas for the attendance of witnesses or the production of books, records, accounts, and papers before it, its secretary, any of its members, or any representative designated by it. Such subpenas shall be signed by a member of the board or its secretary, and may be served by any person."

The California courts have held that the subpoena issued by the State Board of Equalization was substantively proper based upon the constitutional mandate of the people and the statutory directives of the Legislature. The use of the subpoena by the board, as authorized by Section 15613 of the Government Code, clearly was necessary in order that the duties so required of the board could be performed.

Petitioners do not and in this Court could not question that substantive functions relating to intercounty equalization are imposed on the board by the California Constitution and the statutes. Rather, their contentions are based on a fallacious concept of the due process clause.

II. The Authority of an Administrative Agency to "Investigate" Is Not Constitutionally Limited by the Agency's Authority to "Regulate"

The parties are agreed that the subpoena was issued by the board in furtherance of an "investigatory" function and not an "adjudicatory" function. From this, however, petitioners assert that the board may

not "investigate" the affairs of a common property taxpayer because it does not have powers of regulation with respect to such taxpayers.

Petitioners' contentions are based on a misapprehension of the facts and authorities which appear to be no longer the law.

First, intercounty equalization is but the last step in a chain of events which begin with the assessment made by a county assessor against an individual taxpayer. This is followed by intracounty equalization by the county board of supervisors sitting as the county board of equalization. Finally, the State Board of Equalization is required to equalize the assessment rolls as between the counties of the State.

There can be no uniformity or equality in the application of the property tax as required by the Constitution (Section 1, Article XIII) unless each link of the chain is sound. Thus, it can be said (and the trial court concluded) that the State Board of Equalization does "regulate" the property tax imposed on all taxpayers in this State. Petitioners' basic premise, accordingly, is fallacious.

Even if it is assumed *arguendo* that the State Board of Equalization does not "regulate" the affairs of "common property" taxpayers, nevertheless the subpoena here was within the authority of the board. Petitioners' arguments to the contrary are based on authorities which appear to be no longer the law. Thus, petitioners cite the cases of *Ellis* v. *Interstate Commerce Commission* (1915) 237 U. S. 434, and *Jones* v. *Securities and Exchange Commission* (1936) 298 U. S.

1, for the proposition that the power of investigation is limited by the power of regulation.

As to whether the power to "regulate" limits the power to "investigate," petitioners have failed to recognize that in 1937 this Court held that the Illinois Commerce Commission could require production of records and reports from a foreign corporation which was engaged in interstate commerce and beyond the commission's regulatory power (*Natural Gas Pipeline Co.* v. *Slattery* (1937) 302 U. S. 300). In 1940, this Court denied certiorari after a lower court specifically rejected the contention that a subpoena for records must be limited to employees who were not exempt from the Wage Hour Act (*Fleming* v. *Montgomery Ward & Co.* (7th C. C. A., 1940) 114 F. 2d 384, 392, cert. den. (1940) 311 U. S. 690).

In sustaining the constitutionality of the Wage Hour Act in 1941, relating to interstate business, this Court upheld a requirement that certain records of wages and hours be kept. The Court remarked that "The requirement for records even of the intrastate transaction is an appropriate means to the legitimate end." (*United States* v. *Darby* (1941), 312 U. S. 100, 125.)

In 1943, this Court held that a district court must enforce a subpoena duces tecum at the instance of an administrative agency even in the absence of a showing that the company whose records were sought was subject to the regulatory jurisdiction of the agency (*Endicott Johnson Corp.* v. *Perkins* (1943) 317 U. S. 501). And in 1946, this Court made clear

that an administrative subpoena duces tecum will be judicially enforced if "the investigation be for a lawfully authorized purpose, within the power of Congress to command"; this applies not only to adjudications and to investigations relating to law enforcement but also to "general or statistical investigations authorized by Congress" (*Oklahoma Press Pub. Co.* v. *Walling* (1946) 327 U. S. 186, 209).

Perhaps the most pertinent indication of the present state of the law is the summary reversal by this Court of *Crafts* v. *Federal Trade Commission* (C. A. 9th, 1947) 244 F. 2d 282, on October 8, 1957 (2 L. Ed. 2d (Adv.) 23).

It is to be remembered that by constitutional mandate of the people and by the statutory directives of the Legislature, the investigation here involved has been authorized. It must follow, based on the authorities cited, that there are no due process impediments to the issuance of the subpoena even if it be assumed that the State Board of Equalization does not "regulate" with respect to common property taxpayers such as Redding.

III. Petitioners Were Fairly Informed of the Scope of the Inquiry and Their Rights Were Fully Protected

Petitioners' reliance on *Watkins* v. *United States* (1957) 354 U. S. 178, also is misplaced.

Entirely apart from the fact that the *Watkins* case involved constitutional questions relating to the First, Fourth and Fifth Amendments which are not pre-

sented here, the factual situation is completely different from that presented in the *Watkins* case. A mere reading of the subpoena (Petition, pp. 5-7) and the specific statutory directions of the Legislature as set forth in Section 1831 of the Revenue and Taxation Code (as added by Chapter 1466, Statutes of 1949) fully and fairly informed petitioners of the scope and nature of the board's inquiry. It was simply to ascertain the "market value" of petitioners' property and no more.

Moreover, petitioners' assertion that there is no way for a person to test the validity of a subpoena but that he "must produce the books and records or not produce them, at his peril" (Petition, p. 14) is completely unfounded. This mandamus proceeding to quash the subpoena was brought by petitioners for that very reason, i.e., to test the validity of the subpoena.

In truth, petitioners had ample opportunity to object to the inquiry here and its scope on the grounds of relevancy in the trial court and failed to do so. To the contrary, the trial court found, as the District Court of Appeal held, that the inquiry was relevant and necessary if the constitutional and statutory inter-county equalization duties of the State Board of Equalization were to be performed adequately and competently.

The California courts properly concluded that petitioners' contention was without merit.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

EDMUND G. BROWN, Attorney General
of the State of California

JAMES E. SABINE,
Assistant Attorney General

IRVING H. PERLUSS,
Assistant Attorney General

Counsel for Respondents

APPENDIX "A"

California Constitution, Section 9, Article XIII:

A State Board of Equalization, consisting of one member from each congressional district in this State, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several counties of the State for the purposes of taxation. The Controller of State shall be ex officio a member of the board. The boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such state and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to county assessments, and under such rules of notice as the state board may prescribe as to the action of the state board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; provided, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State Board of

Equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The Legislature shall have power to redistrict the State into four districts as nearly equal in population as practical, and to provide for the elections of members of said board of equalization.

Chapter 256, California Statutes of 1955:

The provisions of Sections 1 to 27, inclusive, of this act [Chapter 1466, Statutes of 1949] shall take effect on September 2, 1950, to the end that they shall be operative for the first time with respect to assessments made as of the first Monday in March, 1957, and taxes levied and funds allocated on the basis thereof. Meanwhile, when funds are available for that purpose, the State Board of Equalization shall proceed with surveys in the manner directed by Section 1831 of the Revenue and Taxation Code, as added by this act, to assure completion of a survey pursuant to that section with respect to each county by the second Monday in July, 1957.

Section 1831, California Revenue and Taxation Code:

To enable the board to perform its duties under this article and Sections 9 and 14 of Article XIII of the State Constitution, the board shall make a survey annually in each county to determine the relationship between the total value of land, improvements and tangible personal property entered upon the roll by the assessor, and the total market value thereof. As a basis for this determination, the board shall consider sales and other appraisal data compiled by appraisers competent to determine accurately the market value of the property. These data shall relate to representative samples of property subject to local assessment in

each county sufficient in number and dispersion to assure an adequate cross-section of the taxable wealth within the county, both as to the classes of property enumerated and as to the location thereof.

Section 15613, California Government Code:

The board may issue subpenas for the attendance of witnesses or the production of books, records, accounts, and papers before it, its secretary, any of its members, or any representative designated by it. Such subpenas shall be signed by a member of the board or its secretary, and may be served by any person.

o